IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

FORT WORTH DIVISION

UNITED STATES OF AMERICA,	) CASE NO. 4:15-CR-271-A
	)
Government,	)
	) FORT WORTH, TEXAS
VERSUS	)
	) MAY 20, 2016
ROBERT EVERHART (06),	)
	)
Defendant.	) 9:16 A.M.

VOLUME 1 OF 1
TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE JOHN McBRYDE
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S:

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P R O C E E D I N G S

May 20, 2016 - 9:16 a.m.

THE COURT: I'm calling for sentencing, it's in Case Number 4:15-CR-271-A. It's United States of America versus Robert Henry Lee Everhart.

And it looks like Mr. Wolfe's here for the government, and Mr. Ottaway is here for the defendant.

Mr. Everhart, state your full name for the record.

THE DEFENDANT: Robert Henry Lee Everhart.

THE COURT: Okay. You appeared before me on -- let me get the exact date -- January 27, 2016, when you pleaded guilty to the offense charged by the one-count indictment in this case, and that is conspiracy to possess with intent to distribute a controlled substance, and, of course, we're here today for sentencing based on the conviction resulting from that plea.

Mr. Ottaway, did you and your client receive in a timely manner the presentence report and the addendum to it?

MR. OTTAWAY: We did.

THE COURT: And did both of you read those items and then discuss them with each other?

MR. OTTAWAY: We did.

THE COURT: There were some objections filed, but they were all withdrawn, so as I look at the record now, there are no objections to the presentence report.

Is that correct, Mr. Ottaway?

MR. OTTAWAY: Yes.

THE COURT: Okay. There being no objections to the presentence report, the Court adopts as the fact findings of the Court the facts set forth in the presentence report as modified or supplemented by the addendum, and adopts as the conclusions of the Court the conclusions expressed in the presentence report as modified or supplemented by any conclusions expressed in the addendum.

The Court concludes that the total offense level is 33; that the Criminal History Category is V; that the imprisonment range is 210 to 262 months; that the supervised release range is 4 to 5 years; that the fine range is $35,000 to $5 million; and that a special assessment of $100 is mandatory.

Okay. You can make whatever statement you would like to make on behalf of your client at this time, Mr. Ottaway.

MR. OTTAWAY: Judge, I haven't known Mr. Everhart that long, but I have met his family, and his mother and his sister and his wife here, and the little one -- I don't know if you can see him -- he's three.

THE COURT: Well, I think the little one is hiding from me.

MR. OTTAWAY: He's three, Judge, fixing to be four.

THE COURT: I see the little one now.

MR. OTTAWAY: Robert's 35 years old. His back's going out on him. He's got a long history of drug abuse, and now he's fixing to be away, and I just can't imagine being away from family and the young one for as long as he's looking at. You're looking at decades.

So he wants to speak to you and tell you how much he would like to change and get out and be there. Maybe even by the time this little boy gets married, he might be out by that time. So if you're thinking about a couple of decades, he would like to speak to you about that. He's got a long history of drug abuse, and he's going to ask you for drug treatment also.

THE COURT: Okay. Mr. Everhart, you have the right to make any statement or presentation you would like to make on the subject of mitigation, that is, the things you think the Court ought to take into account in determining what sentence to impose, or on the subject of sentencing more generally, and at this time I'll invite you to do that.

THE DEFENDANT: Your Honor, I've been making poor decisions for a long time. I've neglected my family. I've been thoughtless, selfish. I got my family here behind me. I hope that I can use this time in the BOP to take any kind of drug treatment or any kind of class that will help me change my behaviors and be a positive role model to my son.

I would like to ask you to get me into some sort of drug treatment, and I ask for leniency, please.

THE COURT: Okay. Anything else?

MR. OTTAWAY: No.

THE COURT: The probation officer indicated this might be a case where a sentence above the top of the advisory guideline range would be appropriate, and I'm inclined to agree that it would be appropriate, but I don't plan to do that in this case. I am going to sentence at the top of the advisory guideline range, and I hope that by the time that sentence is served, the defendant won't have the kind of problems he's been having.

The sentence I propose to impose is a sentence of imprisonment of 262 months to run concurrently with the pending state court drug offense that's Case Number F15-30552-W, and the pending parole violation of assault bodily injury family violence enhanced. That's pending in the district court in Dallas County as F -- Case Number F13-00157-W. The 262 months of imprisonment imposed -- that I plan to impose will be concurrent with those.

And the term of imprisonment will be combined with an obligation to serve a term of supervised release of 3 years once the term of imprisonment has been served -- 4 years, not 3 years, a 4-year term of supervised release, and that will be combined with an obligation to pay a special assessment of

$100. That's payable immediately at the time of sentencing.

A sentence of the kind I've described is one that I believe will adequately and appropriately address all the factors the Court should consider in sentencing under 18 United States Code Section 3553(a).

So the Court's ordering and adjudging that the defendant be committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 262 months to run concurrently with the matters I've already indicated.

I'm also ordering that he serve a term of supervised release of 4 years that would start when he has completed his sentence of imprisonment.

Now, the conditions of that supervised release will be the standard conditions that will be set forth in the judgment of conviction and sentence, and the following additional conditions:

He shall not commit another federal, state, or local crime.

He shall not possess illegal controlled substances.

He shall cooperate in the collection of DNA as directed by the probation officer and as authorized by the Justice for All Act of 2004.

He shall refrain from any unlawful use of a controlled substance, and shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

He shall participate in mental health treatment services as directed by the probation officer until successfully discharged, and those services may include prescribed medications by a licensed physician, and he'll contribute to the cost of those services at the rate of at least $25 a month.

He shall participate in a program approved by the probation office for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, and he shall abstain from the use of alcohol and all other intoxicants during and after completion of that treatment, and he'll contribute to the cost of those services at the rate of at least $25 a month.

I'm also ordering that he pay a special assessment of $100. That's payable immediately to the United States of America through the office of the clerk of court here in Fort Worth.

And I'm going to recommend that he be permitted to participate in the long-term drug treatment program. The Bureau of Prisons doesn't have to follow my recommendation, but I will recommend that.

Mr. Everhart, you have the right to appeal from the sentence I've imposed, if you're dissatisfied with it. That appeal would be to the Fifth Circuit.

You have the right to appeal in forma pauperis, that means without any cost to you, if you were to qualify for it, and I assume you probably would. You have the right to have the clerk of court file a notice of appeal for you, and the clerk would do that forthwith, if you were to specifically request it.

You and your attorney have been given a form that outlines certain rights and obligations in reference to an appeal. If you haven't already done so, I want the two of you to review that, and once both of you are satisfied you understand it, I want both of you to sign it and return it to the court coordinator.

Has that been done?

MR. OTTAWAY: It has.

THE COURT: Okay. The defendant's remanded to custody, and you're excused, Mr. Ottaway.

MR. OTTAWAY: Thank you, Judge.

(End of Proceedings)

REPORTER'S CERTIFICATE

I, Debra G. Saenz, CSR, RMR, CRR, certify that the foregoing is a true and correct transcript from the record of proceedings in the foregoing entitled matter.

I further certify that the transcript fees format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signed this 11th day of July, 2016.

/s/ Debra G. Saenz

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